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January 5, 2007

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: June 23, 2006

Case Number: TSO-0404

This Decision concerns the eligibility of XXXX XXX XXXXX, XXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual should be granted an access authorization. As set forth in this Decision, I have determined that the individual should not be granted a security clearance at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

The individual requested a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being denied pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on April 19, 2006, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j). More specifically, the Notification Letter alleges that the individual has: 1) “an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability [of the individual]”; and, 2) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. §§ 710.8(h) and (j) (Criterion H and Criterion J, respectively). The bases for these findings are summarized below.

The Notification Letter states that on December 19, 2005, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual as suffering from Substance Dependence, Alcohol (Alcohol Dependence), based upon diagnostic criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR). According to the DOE Psychiatrist, this is a mental condition that causes or may cause a significant defect in the individual’s judgment or reliability. The Notification Letter further sets forth several admissions by the individual regarding his past excessive use of alcohol that he made during a Personnel Security Interview (PSI) and the psychiatric interview.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on June 23, 2006, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On June 28, 2006, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, DOE Security called the DOE Psychiatrist as its sole witness. The individual testified on his own behalf, and also called his wife and his father as witnesses. The transcript taken at the hearing will be hereinafter cited as “Tr.” Documents that were submitted during this proceeding by DOE Security and the individual constitute exhibits to the hearing transcript and will be cited respectively as “DOE Exh.” and “Ind. Exh.”

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position of employment with a DOE contractor in May 2002,

and initiated a request for a security clearance in April 2003, by the filing of a Questionnaire for National Security Positions (QNSP). However, the individual's QNSP indicated that he had received alcohol-related treatment and counseling, and information received during the ensuing background investigation raised additional concerns regarding his use of alcohol. The individual was therefore summoned for a PSI on October 17, 2005. The security concerns regarding the individual's use of alcohol were not resolved by the PSI, and he was therefore referred to the DOE Psychiatrist for a psychiatric interview and evaluation, conducted on December 19, 2005. Below is a summary of the information provided by the individual during the PSI and psychiatric interview with respect to his use of alcohol.

The individual began drinking in high school with his friends, and became intoxicated approximately eight times during his junior and senior years. The individual's consumption of alcohol steadily increased following high school and particularly during his early 20's, when the individual was drinking to the point of intoxication three to four times a week. On these occasions, the individual typically drank a six-pack but many times consumed as much as a twelve-pack of beer. The individual's drinking subsided for a period of time, but dramatically escalated again in the mid-1990's when the individual was entering his late 20's. The individual was married in 1995, and admits that his drinking was a significant factor in the breakup of his marriage approximately a year later. The individual became depressed after separating from his wife and began to drink more heavily. The individual approximates that from 1996 through 1998, he was drinking ten hours a day, three to four days a week. The individual missed work approximately ten times a year due to his excessive use of alcohol. The individual began to recognize the seriousness of his problem in 1999 and made attempts to reduce his drinking. The individual had periods of sobriety lasting a few months but would eventually fall back into a pattern of binge drinking.

In April 2000, the individual obtained counseling at an alcohol treatment center. This treatment was only moderately successful. Although the individual resumed drinking within a few months, he was drinking only three times a month, and had fewer incidents of intoxication. The individual was remarried in 2001. The individual's wife expressed concerns about his drinking and the individual therefore limited his consumption in her presence. However, the individual had approximately eight to ten episodes of binge drinking in 2001 and 2002 when his wife was out of town on business. In early 2002, the individual went to his Employee Assistance Program (EAP) counselor who referred the individual to an eight-week outpatient program that the individual attended twice a week. The individual continued to drink following this treatment. In August 2002, the individual began one-on-one sessions with a counselor (Counselor #1), who had greater success in helping the individual to overcome his alcoholism. At the outset, the individual met with Counselor #1 four times a week, but later reduced his sessions to weekly.

The individual initially was not committed to his treatment with Counselor #1 but ultimately, in May 2003, he began complete abstinence. The individual also began attending Alcoholics Anonymous (AA) on an intermittent basis during this time period. Later during 2003, the individual's wife informed him that she was expecting a child and gave the individual an ultimatum that she could not stay with him if he did not stop drinking. The individual remained abstinent until February 2004, when he relapsed into a day of binge drinking while doing chores around the house, and became highly intoxicated. This relapse deeply concerned the individual and he recommitted himself to abstinence. The individual ended his sessions with Counselor #1 in August 2004, and also stopped attending AA, feeling that his drinking was under control. The individual was able to maintain sobriety until September 2005. On this occasion, the individual drank a six-pack of beer while doing yard work but did not digress into excessive binge drinking. Following this relapse, the individual resumed attending AA meetings.

As noted above, the DOE Psychiatrist evaluated the individual in December 2005. In his report issued on January 11, 2006, the DOE Psychiatrist set forth his opinion that the individual meets the DSM-IV TR criteria for Alcohol Dependence. The DOE Psychiatrist further states in his report that the individual's Alcohol Dependence is an illness or mental condition which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. The DOE Psychiatrist recommended as evidence of rehabilitation that the individual continue in AA and get through all of the 12 steps with an AA sponsor and attend at least two meetings a week for at least another 21 months and be abstinent for a minimum of two years. In this regard, the DOE Psychiatrist noted that the individual had already been abstinent since September 2005, three months before his evaluation, and thus the DOE Psychiatrist was requiring an additional 21 months of abstinence. In the absence of this program of rehabilitation, the DOE Psychiatrist recommended as adequate evidence of reformation that the individual have three years of abstinence.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See Personnel Security Hearing, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be

clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual should not be granted an access authorization at this time since I am unable to conclude that such granting would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

#### A. Derogatory Information

The DOE Psychiatrist diagnosed the individual with Alcohol Dependence based upon diagnostic criteria set forth in the DSM-IV TR. DOE Exh. 5 at 15. The DSM-IV TR generally provides that a diagnosis of Alcohol Dependence is supported when the individual manifests three or more of the following behaviors occurring at any time within the same twelve-month period: 1) increased tolerance, 2) withdrawal, 3) alcohol often consumed in larger amounts or over a longer period than intended; 4) persistent desire or unsuccessful efforts to cut down, 5) great deal of time spent in activities to obtain alcohol; 6) important social, occupational, or recreational activities given up or reduced; and 7) continued use despite physical or psychological problem caused or exacerbated by alcohol. *Id.* In the case of the individual, the DOE Psychiatrist determined that the individual met criteria 1, 3, 4, 5, 6 and 7 during his heaviest period of alcohol use between 1995 and 1998. *Id.* In addition, the DOE Psychiatrist found, based upon the information supplied by the individual, that the individual was a user of alcohol habitually to excess from the mid-1980's to 2003. *Id.* at 16. I find that the opinion and findings of the DOE Psychiatrist are amply supported by the individual's admissions and the record of this case. The individual agrees with the diagnosis of Alcohol Dependence and does not dispute the findings of the DOE Psychiatrist. *Tr.* at

73, 78.<sup>2/</sup> The individual's excessive use of alcohol from 1999 to 2003 was also corroborated by his wife at the hearing who testified that the individual would disappear for sometimes days at a time drinking with his friends. Tr. at 11.<sup>3/</sup>

I therefore find that DOE Security properly invoked Criteria H and J in denying the individual's request for a security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., Personnel Security Hearing, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); Personnel Security Hearing, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0014, *aff'd*, Personnel Security Review, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE Security.

#### B. Mitigating Evidence

While the individual agrees with the diagnosis of the DOE Psychiatrist, he believes that he is now rehabilitated from his Alcohol Dependence based upon the length of his sobriety and recent treatment he has received. Tr. at 78. The individual acknowledged that since committing to sobriety in February 2004, there have been two occasions when he consumed alcohol. The first was in September 2005, when he consumed a six-pack of beer while doing yard work. Tr. at 68. The individual revealed this incident during his PSI in October 2005, and to the DOE Psychiatrist during the psychiatric interview in December 2005. See DOE Exh. 9 (PSI) at 12-13; DOE Exh. 5 at 10. At the hearing, the individual revealed that he had another incident of alcohol use in June 2006, when he decided to consume three beers over lunch. Tr. at 9, 69. However, the individual does not view the September 2005 and June 2006 incidents as actual relapses into dependent use of alcohol since he was able to control his drinking, and did not become intoxicated or go on a binge as in the past. Tr. at 67, 69. The individual therefore claims February 2004 is his sobriety date and thus contended that he had

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<sup>2/</sup> Subsequent to the hearing, the individual had an alcohol assessment and evaluation performed by another psychiatrist, who also diagnosed the individual with Alcohol Dependence in Full Sustained Remission. See Ind. Exh. XIV at 3.

<sup>3/</sup> While the individual and his present (second) wife were not married until 2001, they met and began living together in 1999. Tr. at 12.

achieved two years and seven months of sobriety at the time of the hearing. Tr. at 66, 71, 74.

In addition, the individual adduced evidence and testimony that he rededicated himself to seeking alcohol treatment immediately following his interview with the DOE Psychiatrist. In late December 2005, the individual increased his attendance at AA meetings and has attended one to two AA meetings per week since that time. See Ind. Exh.'s I & IX. The individual conceded at the hearing that he was previously resistant to the AA regimen due to his lack of religious conviction. Tr. at 58-59. The individual claims, however, that he now sees the benefits of AA and has become a committed participant. Id. The individual acquired an AA sponsor in February 2006, and is now working on Steps 4 and 5 of AA's Twelve-Step program. Tr. at 64; see Ind. Exh. XIII. The individual has become very involved with his AA chapter and chairs some of the meetings. Tr. at 65.

In January 2006, the individual voluntarily entered into an intensive outpatient (IOP) program administered by a counselor (Counselor #2) recommended by the individual's EAP counselor. Tr. at 26, 62-63. The initial phase of the IOP entailed three group therapy sessions and a one-on-one counseling session with Counselor #2 each week, over a twelve-week period. Id., Ind. Exh. II at 1. According to the letter submitted by Counselor #2, the individual successfully completed the first phase of the IOP on April 30, 2006, with a 100% attendance record. Ind. Exh. II at 1. The individual was also subject to random urine screens during that time, all of which tested negative for alcohol or illicit drugs. Id. The individual began the second phase of the IOP, an aftercare phase, on May 1, 2006. During this phase, clients attend one three-hour group therapy session per week for one year. Id. The individual also meets with Counselor #2 on a bimonthly basis. Tr. at 63-64. At the time of the hearing, the individual had successfully completed five months of Counselor #2's aftercare program. Counselor #2 gives the individual an excellent prognosis for maintaining his abstinence from alcohol. Ind. Exh. II at 2.

The individual appeared forthright in his testimony that "alcohol has no place in my life right now. And I am done with alcohol, consuming alcohol, and it's not going to be an issue with me anymore." Tr. at 76. The individual stated that being a good father to his daughter, who is now 2½ years old, is an added incentive for maintaining his sobriety. Tr. at 79. In addition, the individual testified that he now has in place a strong support system including his family and friends, Counselor #2, his IOP aftercare program associates and AA sponsor. See Tr. at 60-61. The individual admitted that there have been three or four occasions when he has had a desire to drink, but has immediately reached out to his wife, Counselor #2 and AA sponsor to deal with those urges. Tr. at 61-62.

Finally, the individual's wife and father were persuasive in their testimony that the

individual has made great strides in the past few years in combating his alcoholism, and that he is now thoroughly committed to maintaining his sobriety. See Tr. at 10, 29, 44-45, 52. Neither the individual's wife or his father view the individual's two episodes of drinking, in September 2005 and June 2006, as serious relapses into the kind of alcoholic behavior displayed by the individual in years past. See Tr. at 29-30, 53-54. The individual's AA sponsor, who submitted a letter subsequent to the hearing,<sup>4/</sup> believes that the final incident of drinking in June 2006 "made a deep impression on [the individual] and strengthened his resolve to stay sober and to faithfully work the AA program." Ind. Exh. XIII.

The DOE Psychiatrist testified last at the hearing after viewing the evidence and listening to the testimony of the individual and his witnesses. The DOE Psychiatrist praised the individual for the efforts he has made to address his Alcohol Dependence, noting that the individual's increased AA attendance and counseling are "[v]ery positive. He's doing all the right things." Tr. at 90. Notwithstanding, the DOE Psychiatrist expressed his opinion that the individual had not yet achieved adequate rehabilitation or reformation at the time of the hearing. Contrary to the individual, the DOE Psychiatrist did not view the June 2006 episode of drinking as an insignificant matter, informing the individual that: "[T]o be honest, when I heard you drank in June after you got my report, and, you know, after you and I talked, and you knew that you had a security hearing coming up, it's obvious to me that the alcohol was controlling you at that point rather than you controlling it and not using it. And, see, I worry when someone drinks three beers and they believe that they could do it in a controlled manner, because almost all alcoholics can do that. They can do it once, they can do it twice, they won't do it ten times . . . ." Tr. at 88. The DOE Psychiatrist therefore adhered to the rehabilitation recommendation set forth in his report that the individual have two years of sobriety with continued AA attendance, but now starting from June 2006 (three months prior to the hearing). Thus, the DOE Psychiatrist concluded at the hearing, "I have to consider your sobriety date as June, and I have to consider that, you know, as of today you really need another 21 months of sobriety." Tr. at 88-89.

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<sup>4/</sup> At the hearing, I afforded the individual three weeks leave following the hearing to submit a letter from his AA sponsor and a report from another psychiatrist if the individual chose to seek another evaluation. Tr. at 57, 98. The individual submitted the letter from his AA sponsor and the psychiatric report on October 12, 2006, and they have been included in the record of this proceeding as Ind. Exh.'s XIII and XIV. I received the transcript of the hearing on October 17, 2006, and the record of the proceeding was closed at that juncture. However, on November 28, 2006, the individual filed, without leave, a supplemental report from Counselor #2. This supplemental report will not be given consideration in this Decision, but may be utilized by the individual in any subsequent review proceeding.



Having duly considered this matter, I also am unable to ignore the individual's decision to drink in June 2006. During my questioning of the individual at the hearing, I reminded the individual that during his psychiatric interview, he informed the DOE Psychiatrist that he knows that he has "zero tolerance" with regard to alcohol and he cannot be a normal drinker. Tr. at 75; see DOE Exh. 5 at 13. In addition, I confirmed that the individual received the report of the DOE Psychiatrist in April 2006. Tr. at 75. In specifying his recommendations for rehabilitation and reformation in the report, the DOE Psychiatrist warned that "any return to drinking would mean that he is no longer showing adequate evidence of rehabilitation and reformation." DOE Exh. 5 at 17. Thus, I find inexplicable the individual's decision to drink in June 2006, only two months after receiving the report of the DOE Psychiatrist and knowing that there are security concerns with regard to his use of alcohol. The individual has provided no plausible explanation, only that "I chose to drink that day." Tr. at 69. Later, the individual stated, "So, do I have a clear understanding of why I drank that day? Not really." Tr. at 76.<sup>5/</sup> I am further concerned since, based upon the information supplied by the individual during the PSI and psychiatric interview, there have been several instances since 1999 where the individual has achieved months of sobriety only to return to problematic drinking.

Thus, despite the considerable efforts toward rehabilitation that the individual has made during the past year, which I heartily commend, I am unable to find that the individual's risk of relapse into alcohol use is low at this time.<sup>6/</sup> Section 710.7(a) of the regulations states that "[a]ny doubt as to an individual's access authorization eligibility must be resolved in favor of the national security." 10 C.F.R. § 710.7(a). Therefore, under the circumstances of this case, I find it appropriate to defer to the opinion of the DOE Psychiatrist that the individual has not yet achieved adequate rehabilitation or reformation. I find, accordingly, that the individual has not yet overcome the security concerns associated with his past use of alcohol and diagnosis of Alcohol Dependence.

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<sup>5/</sup> Apparently, the individual's AA sponsor was concerned when the individual told the sponsor that he had drank three beers. According to the individual, his sponsor responded, "You should have called me." Tr. at 70.

<sup>6/</sup> In support of his claim that he has achieved adequate rehabilitation, the individual cites the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, White House, December 29, 2005. More specifically, the individual relies on paragraphs 23(b) and 23(d) which set forth factors for mitigating security concerns related to the use of alcohol. Tr. at 72-73. However, those paragraphs specifically require that the individual have "established a pattern of abstinence (if alcohol dependent)" and "a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations." I do not find that the individual has satisfied these standards under the circumstances of this case.

See Personnel Security Hearing, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, Personnel Security Review, 28 DOE ¶ 83,016 (2001); Personnel Security Hearing, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf.* Personnel Security Hearing, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

### III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h) and (j) in denying the individual's request for a security clearance. For the reasons I have described above, I find that the individual has failed to mitigate the security concerns associated with his past excessive use of alcohol and diagnosis of Alcohol Dependence. I am therefore unable to find that granting the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's request for an access authorization should not be granted at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: January 5, 2007